

Claimant contends Judge Clark erred. Claimant argues that Dr. Michael M. Vesali, a neurologist, established that claimant's condition was caused by her exposure to chemicals at work. Additionally, claimant argues that she made timely claim for workers compensation benefits as she immediately claimed benefits when she learned in July 1999 that her condition was related to her work. Moreover, claimant argues that she should not be penalized for failing to make claim earlier as the company physician in approximately

1995 or 1996 allegedly told her that her symptoms were not related to the chemicals at work. Therefore, claimant requests the Board to reverse the preliminary hearing Order and award benefits.

Conversely, respondent and its insurance carrier request the Board to affirm the preliminary hearing Order. They argue that claimant failed to prove that (1) she became disabled within one year of the last injurious exposure, (2) she made timely notice and written claim, and (3) her condition is related to an exposure to chemicals at work.

The issues before the Board on this appeal are:

1. Has claimant been injured or rendered ill as the result of an exposure to chemicals at work?
2. Has claimant proven that she became disabled within one year of the last injurious exposure to injury-causing or disease-causing chemicals?
3. Has claimant made timely notice and written claim?

#### **FINDINGS OF FACT**

After reviewing the record compiled to date, the Board finds:

1. Claimant worked for respondent for 14 years. During the last few years of that employment, claimant built wire harnesses for airplanes.
2. Claimant's job required her to work around various chemicals. In 1995 and 1996, claimant advised respondent that she was experiencing headaches, nausea, and diarrhea. Respondent sent claimant for blood tests, which were reportedly normal.
3. Sometime after 1994, respondent provided its employees respirator masks that were intended to protect them from chemical fumes. The employees also wore gloves when they were in stock.
4. In 1996, claimant transferred from "striping and IDs wires" into "wiring." At one point in the preliminary hearing, claimant testified that her symptoms improved after the transfer. But at another point in the hearing, claimant testified that her symptoms progressively worsened through her last day of work for respondent on September 26, 1998.
5. According to claimant, she began receiving treatment in September 1998 for her ongoing symptoms from her family physician, Dr. Ronald Reichenberger. Dr. Reichenberger also referred claimant to Preferred Medical Associates where she saw Dr. Timothy S. Shaver, a rheumatologist, and Dr. Michael M. Vesali, a neurologist.

6. In October 1998, Dr. Shaver had a biopsy performed on a skin lesion taken from claimant's right thigh. The pathologists who reviewed the biopsy results, Dr. M. Joe Ma and Dr. Joe J. Lin, diagnosed lymphocytic perivascularitis in the dermis and chronic active inflammation in the subcutaneous tissue consistent with panniculitis. The pathologists also suggested several possible diagnoses that included fungal infection, vasculitis, lupus profundus, sarcoidosis, Weber-Christian disease and other panniculitidis.

7. In March 1999, Dr. Reichenberger had claimant undergo an MRI of the brain, which displayed white matter changes. The doctor who reviewed that MRI, Dr. Norman T. Pay, suggested several possible diagnoses: acute disseminated encephalomyelitis, systemic lupus erythematosus, sarcoidosis, and Lyme's disease.

8. In records dated March 17, 1999, Dr. Shaver noted that claimant was having increasing headaches and episodes of dizziness. Moreover, the doctor noted that sarcoidosis was the most likely diagnosis for claimant's central nervous system abnormalities and her articular and cutaneous manifestations. The doctor wrote:

1) Sarcoidosis would have to still be the number one most likely dx that can tie together her [claimant's] central nervous system abnormalities with her articular and cutaneous manifestations. Given her lack of typical photosensitive rashes, oral ulcerations, or other specific serologic findings (other than a very low titer positive antinuclear antibody), I do not feel that lupus is terribly likely at this point. An undifferentiated vasculitic process would be worth considering as well.

2) The patient [claimant] has also been noted to have a hx of glaucoma and it is unclear she has had any other inflammatory eye disease. This could tie together some of the above features as well at present.

The March 17, 1999 note appears to be the most recent opinion of Dr. Shaver that is part of the record.

9. In March 1999, claimant also saw an eye specialist, Dr. Michael P. Varenhorst. In an April 19, 1999 letter, Dr. Varenhorst stated that claimant had symptoms that suggested the presence of dry eyes, which could be either associated with a collagen vascular disease or a normal process. Approximately one year earlier (in May 1998), claimant had seen one of Dr. Varenhorst's colleagues and reported that she would see flashes of light when she would close her eyes and that she had been experiencing headaches behind her eyes for a year or so.

10. Because claimant had been experiencing muscle weakness and fatigue in her lower extremities since approximately September 1998, claimant underwent a right thigh biopsy in June 1999, which the doctors hoped would lead to a definitive diagnosis. The results from that biopsy indicated that there was fiber atrophy in the right quadriceps skeletal

muscle but no vasculitis (inflammation of a vessel) or inflammatory myopathy (any disease of a muscle). Additionally, the biopsy indicated no vasculitis, inflammation, or amyloidosis (a metabolic disorder marked by amyloid deposits in organs and tissue) in the tested peripheral nerve.

11. Dr. Vesali, a neurologist, began treating claimant in April 1999 after the MRI showed abnormalities on claimant's brain. At that time, claimant was experiencing eye dryness, visual problems, painful eyes with headaches, heart palpitations, legs swelling, dizziness, depression, low back pain, neck pain, global muscle pain, joint pain, sleep disturbance, and thyroid disease. According to claimant, Dr. Vesali told claimant in July 1999 that he thought some of claimant's symptoms were related to her exposure to chemicals at work. That was the first time that a physician had related her problems to work.

12. In a June 2000 letter to claimant's attorney, Dr. Vesali linked claimant's peripheral neuropathy, ataxia, and reactive depression to her chemical exposure at work. The doctor wrote, in part:

. . . She [claimant] clearly has developed peripheral neuropathy which was related to her prior chemical exposure at work. Her ataxia is of a sensory type and related to her peripheral neuropathy. As a result of all this, she has developed a secondary depression which again is a secondary effect.

. . .

I believe most of her peripheral neuropathy could be attributed to the chemical exposure. It is questionable whether the white matter ischemic changes in the brain is [sic] related to this chemical exposure.

. . .

I would probably be able to testify that her peripheral neuropathy is related to her prior exposure to chemicals.

13. According to claimant, once she learned from Dr. Vesali in July 1999 that her symptoms were related to work, she immediately served respondent with written claim for workers compensation benefits. In their brief, respondent and its insurance carrier acknowledge that they received written claim on July 12, 1999.

14. The record does not establish which chemical or chemicals, more probably than not, caused claimant's illness. Moreover, the record does not establish when claimant, more probably than not, experienced the last injurious exposure.

CONCLUSIONS OF LAW

1. The preliminary hearing Order should be affirmed.
2. Workers are entitled to receive workers compensation benefits whether they sustain a work-related accidental injury or whether they are rendered ill by an occupational disease.
3. For accidental injuries, workers generally have 200 days from the date of accident or the last date that compensation was provided to make written claim for benefits; provided, however, that the 200-day period is extended to one year when the employer fails to file a timely report of accident as required by statute.<sup>1</sup> Additionally, workers have as few as 10 days or as many as 75 days to provide their employer with notice of the accidental injury.<sup>2</sup>
4. But in disease cases, workers must prove that they became disabled from their occupational disease within one year from their last injurious exposure.

K.S.A. 44-5a01 provides, in part:

(c) In no case shall an employer be liable for compensation under this section unless disablement results within one (1) year or death results within three (3) years in case of silicosis, or one (1) year in case of any other occupational disease, after the last injurious exposure to the hazard of such disease in such employment, or, in case of death, unless death follows continuous disability from such disease, commencing within the period above limited, for which compensation has been paid or awarded or timely claim made as provided in the workmen's compensation act . . .

5. Additionally, in occupational disease claims, workers are also generally required to provide "written notice" to the employer within 90 days after being disabled by the disease, unless the employer has actual knowledge of the disablement.<sup>3</sup>
6. As indicated in the findings above, the record fails to establish what chemical or chemicals rendered claimant ill or an approximate date of the last injurious exposure. Therefore, if this claim is treated as an accidental injury, claimant has failed to prove timely written claim. On the other hand, if this claim is treated as an occupational disease,

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<sup>1</sup> See K.S.A. 44-520a and K.S.A. 44-557.

<sup>2</sup> See K.S.A. 44-520.

<sup>3</sup> See K.S.A. 44-5a17.

claimant has failed to prove that she became disabled within one year of the last injurious exposure. In either event, the preliminary hearing Order denying benefits should be affirmed.

**WHEREFORE**, the Board affirms the December 5, 2000 preliminary hearing Order.

**IT IS SO ORDERED.**

Dated this \_\_\_\_ day of January 2001.

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BOARD MEMBER

c: David H. Farris, Wichita, KS  
Douglas C. Hobbs, Wichita, KS  
John D. Clark, Administrative Law Judge  
Philip S. Harness, Director